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November 18, 2020

**Via ECF**

Hon. Judge Brenda K. Sannes  
United States District Court Judge  
Northern District of New York

Re: *Jane Doe, et al. v Howard Zucker, et al.*, Docket No: 1:20-CV-00840-BKS-CFH

Dear Judge Sannes:

This firm represents defendants Cocksackie-Athens School District, Randall Squier, Freya Mercer, Penfield Central School District, Dr. Thomas Putnam, Lansing Central School District, Chris Pettograsso, Christine Rebera, and Lorri Whiteman (“Defendants”) in the above referenced matter. We write in response and opposition to Plaintiffs’ emergency motion filed on November 17, 2020 seeking a preliminary injunction (“PI”) and a Temporary Restraining Order (“TRO”), Docket No. 116 and attachments (“Emergency Motion”).

Defendants respectfully join in the arguments put forth in the preliminary response to Plaintiffs’ papers filed by the State Defendants Howard Zucker, M.D., J.D., the Commissioner of the New York State Department of Health (“DOH”); Elizabeth Rausch-Phung, M.D., the Director of the Bureau of Immunizations for the DOH; and DOH, Docket No. 117, and in the response filed by co-defendants South Huntington Union Free School District, Three Village Central School District, Ithaca City School District, Albany City School District, David Bennardo, Cheryl Pedisich, Corinne Keane, Dr. Luvelle Brown, Susan Eschbach, Kaweeda Adams, and Michael



Paolino, Docket No. 118. Defendants concur that, because Plaintiffs filed a notice of appeal, Docket No. 113, on November 13, 2020 as to this Court’s Order regarding the originally sought PI and TRO, and the issue of a PI and TRO in relation to remote learning is encompassed therein, jurisdiction over the issues set forth in Plaintiffs’ Emergency Motion is now with the Second Circuit and therefore Plaintiffs’ Emergency Motion should be denied. *See Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) (citation omitted) (“The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.”).

Earlier today, this Court directed Plaintiffs via Text Order, Docket No. 120, to file a letter brief “addressing the issue of whether this Court has jurisdiction to grant the preliminary injunctive relief sought” by November 25, 2020. Defendants respectfully request the opportunity to participate in any additional filings on these issues permitted by the Court. Additionally, should the Court grant Plaintiffs’ requested relief, Defendants respectfully request that, because no class has yet been certified in this action, the relief be granted only as to named Plaintiffs in this action.

Thank you for your consideration of this matter.

Respectfully submitted,

/s/ James G. Ryan  
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cc: *All Attorneys of Record via ECF*